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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JACOB DANIEL RICHARDSON,

Defendant and Appellant.

B209093

(Los Angeles County
Super. Ct. No. NA074942)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Mark C. Kim, Judge. Affirmed.

Sally Patrone Brajevich, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Defendant Jacob Daniel Richardson appeals from the postjudgment order revoking probation and the judgment executing a previously stayed four-year state prison sentence. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On July 11, 2007, defendant took merchandise from a grocery store without paying for it. On October 5, 2007, represented by appointed counsel, defendant waived his constitutional rights to trial, entered a guilty plea to second degree burglary (Pen. Code, § 459)¹ and admitted having committed the offense while released on his own recognizance (§ 12022.1) in case No. NA074942. The trial court found the plea had been freely and voluntarily entered, and there was a factual basis for the plea. Defense counsel joined in the plea. The court sentenced defendant to a four-year term in state prison, suspended imposition of sentence and placed him on three years formal probation, on condition defendant serve 129 days in county jail, with credit for time served. The court ordered defendant to pay a \$20 security assessment and a \$200 restitution fine.

On April 28, 2008, defendant's probation was summarily revoked following his arrest in case No. NA078061.

On June 27, 2008, there was a combined hearing on the contested probation violation and a motion to suppress evidence (§ 1538.5). Long Beach Police Officer David Strohman testified he had an unidentified police assistant arrange for the purchase of \$40 of narcotics. The police assistant met with defendant on the street. Codefendant

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

Neal T. Prisco (Prisco) arrived by car minutes later.² Defendant got into the car, and Prisco drove him around the block and handed him something. Prisco took defendant back to where the police assistant was waiting. Defendant got out of the car and gave something to the police assistant as Prisco drove away. Defendant headed for an apartment complex.

The police assistant told Officer Strohman he had just purchased methamphetamine from defendant and produced a baggie, which appeared to contain methamphetamine. Defendant was arrested minutes later. Officer Strohman advised defendant of his right to remain silent, to the presence of an attorney and, if indigent, to appointed counsel (*Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694]), which defendant acknowledged he understood and waived. Defendant then admitted to having ordered for the police assistant some methamphetamine from Prisco, which enabled defendant to demand a portion of the purchased methamphetamine from the police assistant as payment.

After listening to the evidence and counsels' argument, the trial court denied the motion to suppress evidence and found defendant in violation of probation in case No. NA074942 based on the arrest in case No. NA078061. The court declined to reinstate probation and executed the previously stayed four-year state prison sentence. Defendant received presentence custody credit of 237 days (129 original days served in connection with the burglary charge and 72 current actual days and 36 days of conduct credit).

Defendant waived his constitutional rights to trial and entered a no contest plea in case No. NA078061 to selling methamphetamine (Health & Saf. Code, § 11379, subd. (a)) in exchange for an agreed upon sentence of two years to be served concurrently to the term imposed in case No. NA074942. The court ordered defendant to pay a \$20

² Prisco pleaded no contest to selling methamphetamine in violation of Health and Safety Code section 11379, subdivision (a), and related offenses and received an aggregate three-year state prison term. He is not a party to this appeal.

security assessment and a \$200 restitution fine. A parole revocation fine was imposed and suspended pursuant to section 1202.45. Defendant timely appealed, but failed to obtain a certificate of probable cause.

DISCUSSION

Defendant timely appealed and we appointed counsel to represent him on appeal. After examining the record, counsel filed a request for an independent review of the record for arguable issues pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

On December 12, 2008, we advised defendant he had 30 days within which to submit personally by brief or letter any grounds of appeal, contentions or arguments he wanted us to consider. To date, we have received no response from defendant.

We have examined the entire record and are satisfied defendant's attorney has complied fully with the responsibilities of counsel. No arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende, supra*, 25 Cal.3d at p. 441.) However, because defendant pleaded no contest and failed to obtain a certificate of probable cause, his notice of appeal is not operative to challenge the judgment. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1096, 1099; *People v. Panizzon* (1996) 13 Cal.4th 68, 79.) As for the order revoking probation, there is substantial evidence defendant was selling methamphetamine in violation of his probation. (See *People v. Kurey* (2001) 88 Cal.App.4th 840, 848-849.)

DISPOSITION

The judgment is affirmed.

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JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.